Public Employees' Retirement Board

March 31, 2016

Topic: **PIMCO Investment Management Agreement (IMA)**

Rationale: **PIMCO was awarded the contract to provide Investment Management and Stable Value oversite in the RFP process completed in November 2015. This contract finalizes the negotiations with PIMCO for the services requested in the RFP.**

Staff Recommendation: **Approve contract.**

Recommended Board motion:

☐ **I move to approve**

☐ **Recommend ________________________.**

____
Moved by

____
Seconded by

____
Vote

INVESTMENT MANAGEMENT AND FIDUCIARY SERVICES AGREEMENT

(INSERT CONTRACT NUMBER)

THIS INVESTMENT MANAGEMENT AND FIDUCIARY SERVICES AGREEMENT (the "Agreement" or the "Contract") is entered into by and between the State of Montana (the "State" or "Montana"), Public Employees Retirement Board (the "Board"), for the investment management services and stable value benefit responsive contract services with respect to the Stable Value Option of the Pooled Trust (both terms as defined below), whose address and phone number are 100 North Park Avenue, Suite 200, Helena, Montana 59620-0131 and **(insert phone number)** and Pacific Investment Management Company LLC ("Manager", "PIMCO" or "Contractor"), whose address and phone number are 650 Newport Center Drive, Newport Beach, CA 92660 and (949) 720-6000.

WHEREAS, stable value assets of the Defined Contribution Retirement Plan are approximately _________ and are invested by Manager and stable value assets of the 457 Deferred Compensation Plan (each, a "Plan" and collectively, the "Plans") are approximately _____________ are invested by the Manager; and

WHEREAS, the Board has established a pooled trust, State of Montana Public Employees Pooled Trust ("Pooled Trust"), for the purpose of combining the stable value assets of the Plans into one separate portfolio invested by the Manager. The Pooled Trust is intended to qualify as a group trust under Sections 401(a)(including Section 401(a)(24) and 501(a) of the Internal Revenue Code of 1986, as amended. The Pooled Trust is a governmental entity or instrumentality and therefore asserts that it is not subject to federal taxes, the Employee Retirement Income Security Act of 1974, as amended, or the Investment Company Act of 1940, as amended. A copy of the Pooled Trust is available in the offices of the Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, Helena, MT 59620-0131; and

WHEREAS, the Board has retained State Street Bank & Trust (the "Custodian") to hold, maintain, and value the Plans' Pooled Trust assets comprised of fixed income assets and benefit responsive contracts (the "Stable Value Option"); and

WHEREAS, the Pooled Trust (as defined above) is a trust for employee benefit plans established by and existing pursuant to the terms and provisions of Title 19, Chapters 2, 3 and 50 of the Montana Code Annotated; and

WHEREAS, the underlying statutes provide that the administration of the Plans, including the investment of assets, is vested in the Board which is a fiduciary with respect to the Plans; and

WHEREAS, the Board has elected to delegate its investment management responsibilities, with respect to certain of the Plans' assets, to a qualified investment manager; and

WHEREAS, the Manager is a qualified "investment manager", as that term is defined in Section 3(38) of the Employees Retirement Income Security Act of 1974 ("ERISA"), and is willing to accept investment management responsibilities with respect to the Pooled Trust; and

WHEREAS, the Board has also elected to retain the Manager to provide certain fiduciary services with respect to benefit responsive contracts ("Benefit Responsive Contracts") held in the name of the Plans' Pooled Trust in connection with the assets of the Stable Value Option established under the Pooled Trust.

NOW, THEREFORE, it is agreed as follows:

1. RETENTION AS MANAGER FOR INVESTMENT MANAGEMENT SERVICES

The Board hereby retains the Manager to provide fixed income investment management services (the "Investment Management Services") with respect to the Pooled Trust assets and such other Pooled Trust assets which may from time to time be transferred to Manager's control. The Manager hereby accepts the retention and agrees to provide such Investment Management Services within a single portfolio (the "Account").

The Board and the Manager understand and agree that neither the Manager nor its employees are employees of the Board or the State.

2. CERTIFICATION BY MANAGER

The Manager certifies that it is presently a qualified "investment manager", as that term is defined in Section 3(38) of ERISA, and that it will continue to maintain that status for the term of this Agreement. The Manager also certifies that it is a "qualified professional asset manager (QPAM)" as that term is defined under the Prohibited Transaction Class Exemption 84-14 (and amendments) issued by the U.S. Department of Labor.

3. ACKNOWLEDGEMENT OF "FIDUCIARY" STATUS

The Manager acknowledges that, with respect to carrying out its Investment Management Services and Benefit Responsive Contract Services (as defined in section 6.1) of the Pooled Trust, it will function as a "fiduciary", as that term is defined in Section 3(21)(A) of ERISA.

4. MANAGEMENT OF ASSETS

The Manager will manage all assets held in the Pooled Trust. For this purpose, and subject only to the specific limitation made part of this Agreement and defined in the investment objectives set forth in Exhibit A attached hereto ("Investment Guidelines"), the Manager has full investment authority and discretion and may purchase, sell, generally deal in or exchange assets for the Pooled Trust as it determines. However, the Manager will not act as custodian of the assets held in the Pooled Trust.

The Manager further has the authority to instruct the Custodian, designated herein, to (i) pay cash for securities and other property delivered to the Custodian for the Pooled Trust, (ii) deliver or accept delivery of, upon receipt of payment or payment upon receipt of, securities, commodities or other property, underlying any futures or options contracts, and other property purchased or sold in the Account, and (iii) deposit margin or collateral which shall include the transfer of money, securities and other property to the extent necessary to meet the obligations of the Pooled Trust with respect to any investment made pursuant to the Investment Guidelines attached hereto as Exhibit A. The Manager does not have the authority to cause the Custodian to deliver securities and other property, or pay cash to the Manager.

The investment authority granted to the Manager includes the authority to exercise whatever powers the Plans may possess with respect to any of their assets held in the Pooled Trust, including, but not limited to, the right to vote, the power to exercise rights, options, warrants, conversion privileges, and redemption privileges, and to tender securities pursuant to a tender offer.

The Manager will not file class action claim forms or otherwise exercise any rights the Board may have with respect to participating in, commencing or defending suits or legal proceedings involving securities or issuers of securities held in, or formerly held in, the Account, unless the Manager and the Board mutually agree in writing that the Manager may take any such actions.

The Board agrees that the Manager will be solely responsible for voting all proxies related to the assets in the Pooled Trust. The Manager will maintain a record of how the Manager voted and a copy of such record will be delivered to the Board annually. It is further understood that the Manager need not and is not required to accept any direction concerning the voting of the proxies from the Board. The right of the Manager to vote proxies will continue until the earlier of the termination of the Agreement or such time as the Board specifically revokes the Manager's authority to vote proxies and specifically reserves such right to the Board or to another.

In the event the Board desires to permit investment in PIMCO Funds Private Account Portfolio Series pooled funds (the "PAPS Funds") by the Pooled Trust, the Board may consent to engage in, and purchase transactions of, specified PAPS Funds pursuant to a 77-4 Disclosure and Consent document.

The Manager is authorized to effect cross transactions (each, a "Cross Transaction" and collectively, the "Cross Transactions") between the Account and other accounts managed by the Manager and its affiliates. The Board represents that such Cross Transactions are not prohibited under any applicable state, county or local law applicable to the Board, the Plans or the Pooled Trust. PIMCO's policies provide that each Cross Transaction must be legally permissible, consistent with the respective investment policies and investment restrictions of each participant, and involve a purchase or sale for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available. No brokerage commission, fee (except for customary transfer fees) or other remuneration may be paid in connection with a Cross Transaction. Under PIMCO's procedures, each Cross Transaction must be affected at the independent "current market price" of the security.

The Manager may delegate portfolio management and administrative duties to its affiliates and may share such information as necessary to accomplish these purposes. Additionally, the Manager will have the ability to delegate back office services to State Street Investment Manager Solutions, LLC and its affiliates. In all cases, the Manager shall remain liable as if such services were provided directly. No additional fees shall be imposed for such services except as otherwise agreed.

Neither the Manager nor the Board will engage in securities lending transactions on behalf of the Account. If the Board or the Custodian enter into securities lending transactions on behalf of the Account, the Board or the Custodian shall be responsible for ensuring that the securities or other assets in the Account are available for sale at all times.

5. INVESTMENT GUIDELINES

The Board will supply the Manager with such information as the Manager reasonably requires concerning the Pooled Trust's tax position, liquidity requirements and other information useful in developing investment objectives. The Investment Guidelines agreed to by the Board and the Manager are defined in Exhibit A. The Investment Guidelines negotiated by the Manager with the Contract Providers as provided in the Benefit Responsive Contracts (both as defined in Exhibit B) may be in the aggregate no less restrictive than the Account Investment Guidelines set forth in Exhibit A. In the event of a discrepancy between the Account Investment Guidelines and the Contract Provider Investment Guidelines, the Account Investment Guidelines shall govern.

The Manager is authorized on behalf of the Pooled Trust to (i) enter into agreements and execute any documents (e.g., any derivatives documentation such as exchange traded and over-the-counter, as applicable) required to make investments pursuant to Exhibit A, which shall include any market and/or industry standard documentation and the standard representations contained therein; and (ii) acknowledge the receipt of brokers' risk disclosure statements, electronic trading disclosure statements and similar disclosures.

The Investment Guidelines may be changed only by the written agreement of both the Board and Manager. The Manager is entitled to rely upon written clarifications, supplements and modifications to the Investment Guidelines from the Board. Reasonable interpretations of the Investment Guidelines made in good faith by the Manager are binding upon the Board.

The Manager will maintain a log of all transactions placed through all securities brokerage firms, including the name of the firm, a description of each transaction, the date of each transaction, and, where applicable, the amount of the fees or commissions paid.

6. <u>BENEFIT RESPONSIVE CONTRACT SERVICES</u>

6.1 <u>Retention of Manager for the Benefit Responsive Contract Services</u>. In addition to the Investment Management Services to be provided under this Agreement, the Board hereby retains the Manager to provide the Benefit Responsive Contract Services to the Pooled Trust and each Plan for the Stable Value Option set forth in Exhibit B attached hereto (the "Benefit Responsive Contract Services" and collectively, with the Investment Management Services, the "Services"), with respect to Contract Providers (as defined in Exhibit B. The Contract Providers by contract effective May 21, 2015, are Transamerica Premier Life Insurance Company, 100 Light Street, Baltimore, Maryland 21202, and by contract effective July 31, 2015, Voya, One Orange Way, Windsor, Connecticut 06095 and Prudential Insurance Company of America, 751 Broad Street, Newark, New Jersey 07102.

The Manager agrees to use its professional judgment, expertise and efforts to furnish the Benefit Responsive Contract Services on a timely basis and in accordance with the terms of the Agreement, subject to the fiduciary standards set forth in section 10 herein. However, the Board understands that the Manager's ability to perform the Benefit Responsive Contract Services is dependent upon other persons, including the Board, the Custodian, recordkeeper and/or any other third party service provider engaged to perform services for the Pooled Trust, the Plans, the Stable Value Option and/or the Account, performing their responsibilities in good faith and on a timely basis and cooperating with the Manager in its effort to provide the Benefit Responsive Contract Services. To the extent permitted by law, the Manager shall have no responsibility or liability: (a) for any failure of the Board or any other third party to fulfill any of such party's duties or responsibilities in respect of the Pooled Trust, the Plans, the Stable Value

Option and/or the Account or (b) for any advice provided by, or any act or omission of, the Manager that results from its good faith reliance upon any inaccurate or incomplete information provided to the Manager by the Board or any other third party. The Board agrees that it shall (or shall use its best efforts to cause any third party who provides services to the Pooled Trust, the Plans, the Stable Value Option and/or the Account) to cooperate with the Manager and provide the Manager with such information or documentation as the Manager shall reasonably request to facilitate its performance of the Benefit Responsive Contract Services.

Participants of the Plans shall make elections to withdraw or transfer funds from their respective accounts free from any suggestion, instructions, or persuasion by any party to the operation or the management of the Pooled Trust, the Plans and/or the Stable Value Option and participants of the Plans have been advised that any decision with respect to the investment of the assets of the Account shall be made without consultation with any such participant.

The Board shall ensure that the Account, the Plans, and/or the Pooled Trust satisfy, and will continue to satisfy during the term of this Agreement, all applicable legal and regulatory requirements to which the Board, the Plans, and/or the Pooled Trust are subject.

6.2 **Board Representations, Warrants and Acknowledgments with respect to the Benefit Responsive Contract Services.** The Board represents, warrants and acknowledges that:

(a) it has made its own independent review and evaluation of the use of Benefit Responsive Contracts, and has determined that the use of one or more Benefit Responsive Contracts is appropriate for the Plans and/or the Pooled Trust;

(b) it will provide the Manager with all material Plan or Pooled Trust participant communication materials, and any other literature regarding the Pooled Trust, the Plans and/or the Stable Value Option prior to inception of the Benefit Responsive Contract Services, and annually by July 31 of each calendar year or whenever such document or literature is created, amended or revised; and

(c) as a named fiduciary for the Pooled Trust and the Plans, the Manager, to administer its responsibilities set out herein, must be notified in writing of any changes to the Account, the Plans, and/or the Pooled Trust including, but not limited to, the Plans' investment options, transfer restrictions, early retirement programs, company match of participant contributions, or other changes that may reasonably be expected by the Manager to materially affect a Plan participant's transfer or withdrawal activity with respect to the Account. A Contract Provider (as defined in Exhibit B to the Agreement) may withhold payment of the Plan's participant-directed transfers or withdrawals if such notification is not received by the Manager and communicated to the Contract Provider prior to the implementation of these changes and the Contract Provider does not agree to these changes to the Plan insofar as they affect distributions from the Plan. Generally, and in order to negotiate with the Contract Providers to include the Plans' changes under existing Benefit Responsive Contracts, the Manager reserves the right to request copies of the Pooled Trust's, the Plans', the Stable Value Option's and/or the Account's recordkeeping documents, participant communication materials, or any other documentation that may be required to verify that requested participant-directed transfers and withdrawals are qualified for immediate payment at contract value and to make or verify any determinations required to be made as part of the Benefit Responsive Contract Services and the Benefit Responsive Contracts.

6.3 Other Service Providers to the Plans and/or the Pooled Trust. The Board acknowledges that in order for the Manager to perform the Benefit Responsive Contract Services, it will need information from other service providers to the Pooled Trust, the Plans, the Stable Value Option and/or the Account. The Board hereby instructs and authorizes the Plans' and/or Pooled Trust's Custodian and/or recordkeeper or any other service provider with information that is necessary or appropriate for the Manager to carry out the Benefit Responsive Contract Services, to provide the Manager with information to facilitate its ongoing responsibilities regarding the underwriting, negotiation, and ongoing oversight of Benefit Responsive Contracts and the management of the Account, in such form as directed and requested by the Manager. This information includes, but is not limited to, Account daily cash flows, current and historical option balances of the Pooled Trust, the Plans or the Stable Value Option current and historical Account transfer, contribution, and withdrawal activity, and Plans' participant information regarding investment balances, employee status, and age. The Manager agrees that individual participant data is to be kept confidential.

6.4 Risk Acknowledgement. The Board, as a named fiduciary of the Plans and the Pooled Trust, acknowledges and agrees that:

(a) it is possible to lose money by investing in the Account;

(b) there is no guarantee that the Account will be able to achieve its investment objective;

(c) the Account is not guaranteed by the U.S. Government, its agencies and instrumentalities, the Federal Deposit Insurance Corporation, the Manager, or any other entity;

(d) investment in Benefit Responsive Contracts involves certain risks which include, but are not limited to, that the Account's returns may not keep pace with inflation; a Contract Provider or other obligor of the Account may default or fail to make a timely payment, if at all; a Contract Provider could default, become insolvent, file for bankruptcy protection, or otherwise be deemed by the Plans' and/or Pooled Trusts' auditor to no longer be financially responsible and unable to provide Benefit Responsive Contract valuation; an event or condition outside the normal operation of the Plans, such as changes to the Plans, bankruptcy, significant layoffs, or certain participant communications from the Board that could induce transfers or withdrawals from the Account, may cause a Benefit Responsive Contract to not pay benefits at its value; the Account's unit price or yield may change due to changes in interest rates or in the market price of the Account's investments; or there could be a change in tax law or accounting rules;

(e) these risks, if realized, could result in a decline of the Account's value, cause a write-down in the value of the Account, or cause a participant's withdrawal or transfer from the Account to occur at less than Benefit Responsive Contract value;

(f) the Account may be subject to risks other than those described herein;

(g) the Manager is not guaranteeing the rate of return of the Account or any investment in the Account;

(h) the Manager is not guaranteeing the ability of any Contract Provider to meet its obligations under any Benefit Responsive Contract;

(i) the Account is subject to all of the terms and conditions of any Benefit Responsive Contract held;

(j) the terms of a Benefit Responsive Contract are based on the then current Account and the underwriting information provided to the Manager by the Board, Custodian and/or recordkeeper;

(k) changes in the Account may affect the Manager's ability to maintain certain rights or terms under the Benefit Responsive Contracts previously negotiated on behalf of the Plans and/or the Pooled Trust;

(l) certain actions by the Board may result in a decrease in Benefit Responsive Contract value, payments to the Account at something other than the Benefit Responsive Contract Value, or termination of Benefit Responsive Contracts; and

(m) there is no guarantee that a Contract Provider will issue a Benefit Responsive Contract to the Plans and/or the Pooled Trust.

7. <u>REPORTS BY MANAGER</u>

Upon mutual agreement, the Manager will provide to the Board such written quarterly and annual reports concerning its investment activities and Services as may be reasonably requested by the Board.

The Board consents to the delivery of Account statements, reports and other communications with respect to the Account and the Services (collectively, "Account Communications") via electronic mail and/or other electronic means acceptable to the Board, in lieu of sending such Account Communications as hard copies via facsimile, mail or other means. The Board confirms that it has provided the Manager with at least one valid electronic mail address where Account Communications may be sent. The Board acknowledges that the Manager reserves the right to distribute certain Account Communications via facsimile, mail or other means to the extent required by applicable law or otherwise deemed advisable. The Board may withdraw consent to electronic delivery at any time by giving the Manager notice pursuant to section 35 hereof.

8. <u>REPORTS TO MANAGER</u>

The Board has provided to the Manager a true and complete copy of the governing documents of the Plans and the Pooled Trust that are relevant to the Services and Benefit Responsive Contracts entered into on behalf of the Plans and/or the Pooled Trust and agrees that it shall promptly furnish, or cause to be furnished, to the Manager copies of any amendments to such documentation or new Benefit Responsive Contracts or other such documentation prior to their effectiveness (except for those negotiated by the Manager as part of the Services). The Board shall furnish such specific information that the Manager may reasonably request concerning the identity of the "parties in interest" with reasonable promptness.

9. <u>AGGREGATION OF ORDERS</u>

Provided the investment objectives and Investment Guidelines of the Pooled Trust are adhered to, the Board agrees that the Manager may aggregate sale and purchase orders of securities, commodities and other investments held in the Pooled Trust with similar orders being made simultaneously for the accounts managed by the Manager or with accounts of affiliates of the Manager and to elect, where appropriate, any beneficial regulatory treatment, including real time reporting delays, if in the Manager's reasonable judgment such aggregation shall result in an overall economic benefit to the Pooled Trust, taking into consideration the advantageous selling or purchase price, brokerage commission and other expenses.

10. FIDUCIARY STANDARDS

The Manager will carry out its responsibilities described herein in accordance with the applicable provisions of ERISA, including, but not limited to, the fiduciary standards set forth in Section 404(a) of ERISA. It is understood that in the event the Pooled Trust has more than one investment manager, the Manager is obligated to invest the assets in the Pooled Trust without regard to investments made by other investment managers, unless otherwise instructed, in writing, by the Board.

11. TITLE AND USE OF CUSTODIAN BANK

An individual trust (each, a "Trust" and collectively, the "Trusts") for all assets of each Plan within the Pooled Trust has been established. Title to all securities will be held in the name of the Pooled Trust and not the Trusts within the Pooled Trust, provided that for convenience in buying, selling and exchanging securities and in obtaining and facilitating the Pooled Trust's full investment management, the Manager will not define transactions on behalf of either Trust, but solely on behalf of the Pooled Trust. The custodian bank will maintain separate accounting, including all transactions, for each Trust and report such accounting to the Board and, as required, to the Manager. All cash and the indicia of ownership of all Pooled Trust investments shall be held by the custodian bank. The Manager is not liable for any act or omission of the Custodian or the custodian bank.

The Board shall instruct the custodian bank to (a) periodically advise the Manager as to the amount of cash or cash equivalents available for securities in the Pooled Trust; (b) carry out all transactions as may be directed, in writing, by the Manager; and (c) confirm all completed transactions, in writing, to the Manager.

The custodian bank will collect the interest and dividends on the Pooled Trust's investments in its custody and the Manager will have no responsibility in this regard.

The custodian bank may not be replaced or supplemented by another custodian bank without the consent of the Board.

12. USE OF SECURITIES BROKER

Neither the Manager nor any parent, subsidiary or related firm shall act as a securities broker with respect to any purchases or sales of securities which are made on behalf of the Pooled Trust. Unless otherwise directed by the Board in writing, the Manager may select any unaffiliated brokerage firm consistent with the Manager's obligation to seek best execution.

The Manager is not liable for any act or omission of any brokerage firm or firms or counterparties designated by the Board or chosen with reasonable care.

13. REPRESENTATIONS AND AGREEMENTS OF THE BOARD

The Board represents, warrants and covenants that:

(a) the assets of the Account do not constitute assets of (i) an employee benefit plan (as defined in Section 3(3) of ERISA), whether or not subject to Title I of ERISA; (ii) a plan described in Section 4975(e)(1) of the Internal Revenue Code; or (iii) an entity whose underlying assets are assets of a plan described in (i) or (ii) by reason of such plan's investment in the entity;

(b) it is a named fiduciary for the Pooled Trust and each Plan's Trust as contemplated by Section 402 (c)(3) of ERISA; and

(c) the Board has all necessary power and authority to execute, deliver and perform this Agreement and all transactions contemplated hereby on behalf of the Pooled Trust, and such execution, delivery and performance will not violate any applicable law, rule, regulation, governing document (e.g., Trust Agreement), contract or other material agreement binding upon the Board.

(d) the assets of the Pooled Trust are free from all liens and charges and undertakes that no liens or charges will arise from the act or omissions of the Board and the Pooled Trust which may prevent the Manager from giving a first priority lien or charge on the assets solely in connection with the Manager's authority to direct the deposit of margin or collateral to the extent necessary to meet the obligations of the Pooled Trust with respect to any investments made pursuant to Exhibit A.

(e) the Pooled Trust is a "qualified institutional buyer" ("QIB") as defined in Rule 144A under the Securities Act of 1933, as amended, and will promptly notify the Manager if the Pooled Trust ceases to be a QIB;

(f) the Pooled Trust is a "qualified eligible person" ("QEP") as defined in Commodity Futures Trading Commission Rule 4.7 ("CFTC Rule 4.7"), will promptly notify the Manager if the Pooled Trust ceases to be a QEP, and hereby consents to be treated as an "exempt account" under CFTC Rule 4.7; and

(g) the Board shall furnish to the Manager a copy of Title 19, Chapters 2, 3 and 50 of the Montana Code Annotated and any amendments heretofore or hereafter adopted.

14. EFFECTIVE DATE, DURATION, AND RENEWAL

14.1 Contract Term. The Contract's initial term is April 1, 2016, through March 31, 2021, unless terminated earlier as provided in this Contract. In no event is this Contract binding on the Board unless the Board's authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.

14.2 Contract Renewal. The Board may renew this Contract under its then-existing terms and conditions (subject to potential fee adjustments described below in section 15) in 2-year intervals, or any interval that is advantageous to the Board, not to exceed 7 years. If the Board chooses to extend the Agreement beyond 7 years, a new Agreement may be executed between the Board and Contractor under 18-4-306(b) MCA.

15. COST ADJUSTMENTS

15.1 <u>Cost Adjustments Negotiated Based on Changes in Manager's Costs</u>. ***After the Contract's initial term and if the State agrees to a renewal***, the parties may negotiate fee adjustments at the time of Contract renewal. Any fee increases must be based on demonstrated industrywide or regional increases in Manager's fees. The Board is not obligated to agree upon a renewal or a fee increase.

16. SERVICES AND/OR SUPPLIES

Manager shall provide the Board the Services as defined in (RFP #2016-0010V), as amended, which provide the requirements necessary to meet the Services and specifications defined in Section 3, Scope of Project and the related requirements in Section 4.

17. WARRANTIES

Manager warrants that the Services provided conform to the Contract requirements, including all descriptions, specifications and attachments made a part of this Contract. The Board's acceptance of Services provided by Manager shall not relieve Manager from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, the Board may, at Manager's expense, require prompt correction of any Services failing to meet Manager's warranty herein. Services corrected by Manager shall be subject to all the provisions of this Contract in the manner and to the same extent as Services originally furnished.

18. CONSIDERATION/PAYMENT

18.1 <u>Payment Schedule</u>. In consideration of the Services to be provided, the Board shall pay Manager according to the fee schedule contained in Exhibit C attached hereto. Manager's compensation for the Benefit Responsive Contract Services provided in Exhibit B shall be included within the fees payable under the Agreement as set forth in the fee schedule for so long as Manager is the investment manager under the Agreement for the fixed income assets and Benefit Responsive Contracts of the Stable Value Option of the Plans and/or the Pooled Trust, or until and unless the Board and the Manager mutually agree in writing to otherwise revise or supplement the fees and expenses payable to the Manager for the Benefit Responsive Contract Services.

18.2 <u>Withholding of Payment</u>. In addition to its other remedies under this Contract, at law, or in equity, the Board may withhold payments to Manager to the extent Manager has materially breached this Contract. Such withholding may not be greater than the additional costs to the Board caused by the lack of performance.

18.3 <u>Payment Terms</u>. Unless otherwise noted in the solicitation document, the State has thirty (30) days to pay invoices, as allowed by 17-8-242, MCA. Manager shall provide banking information at the time of Contract execution in order to facilitate the State's electronic funds transfer payments.

18.4 Reference to Contract. The Contract number MUST appear on all invoices and correspondence pertaining to the Contract. If the number is not provided, subject to Manager's right to promptly cure pursuant to section 29.2, the State is not obligated to pay the invoice.

19. ACCESS AND RETENTION OF RECORDS

19.1 Access to Records. The Manager shall provide the State, Legislative Auditor, or their authorized agents access, with reasonable prior notice, to any records reasonably necessary to determine Contract compliance. This includes all records and documents relating to the Pooled Trust's investment directed by the Manager. The Board may terminate this Contract under section 29, without incurring liability, for the Manager's refusal to allow access as required by this section. (18-1-118, MCA.)

19.2 Retention Period. The Manager shall create and retain all records supporting the provided Services for a period of three (3) years after either the completion date of this Agreement or the conclusion of any claim, litigation, or exception to this Agreement taken by the Board or a third party.

20. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

In accordance with Montana Code Annotated Section 18-4-141 and Sections 205 (a)(2) and 205(a)(3) of the Investment Advisers Act of 1940, as amended, no assignment of this Agreement may be made by the Manager without the Board's prior written consent. Manager is responsible to the Board for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Manager performing Services on the Account under this Contract. No contractual relationships exist between any subcontractor and the Board under this Contract.

21. HOLD HARMLESS, INDEMNIFICATION AND LIABILITY

The Manager agrees to protect, defend, and save the Board, the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all actual direct claims, demands, causes of action of any kind or character, including the reasonable cost of defense thereof, arising in favor of the Manager's employees or third parties on account of bodily or personal injuries, death, or damage to property to the extent arising out of Services performed or omissions of Services or in any way resulting from the acts or omissions of Manager and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the Board or State, under this Agreement.

The Manager shall not be liable to the Pooled Trust or the Plans for the acts or omissions of any other fiduciary or other person respecting the Pooled Trust or the Plans, or for anything done or omitted by the Manager under the terms of this Agreement if the Manager shall have acted in accordance with the fiduciary standards set forth in section 10 hereof. Nothing in this Agreement shall in any way constitute a waiver or limitation of any rights which may not be so limited or waived in accordance with applicable law. Without limiting the generality of the foregoing, the Manager will not be liable for any indirect, special, incidental or consequential damages.

The Manager shall not be deemed to have breached this Agreement or the Investment Guidelines in connection with fluctuations arising from market movements.

22. <u>AUTHORIZED REPRESENTATIVES</u>

The Manager is expressly authorized to rely upon any and all instructions, approvals and notices given by the Board on behalf of the Pooled Trust by any one or more of those persons designated as representatives whose names, titles and specimen signatures appear in Exhibit D attached hereto. The Board may amend such Exhibit D from time to time by written notice to the Manager. The Manager shall continue to rely upon such instructions until notified by the Board to the contrary.

Upon reasonable request of the Manager, the Board shall provide a copy of its Statement of Governance Principals, or similar governing document, evidencing the authority of the Board President, or other authorized signatory, to sign contracts on the Board's behalf to legally bind the Board.

23. <u>REQUIRED INSURANCE</u>

23.1 <u>General Requirements</u>. The Manager will maintain for the duration of this Agreement, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the Services by the Manager, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

23.2 <u>Primary Insurance</u>. The Manager's insurance coverage shall be primary insurance with respect to the Board and shall apply separately to each project or location. Any insurance or self-insurance maintained by the Board or the State, its officers, officials, employees, or volunteers shall be excess of Manager's insurance and shall not contribute with it.

23.3 <u>Specific Requirements for Commercial General Liability</u>. Manager shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of ***<u>$5 million</u>*** per occurrence and ***<u>$15 million</u>*** aggregate per year to cover such claims as may be caused by any act, omission, negligence of Manager or its officers, agents, representatives, assigns, or subcontractors.

The Board will be covered and listed as an additional insured for liability arising out of activities performed by or on behalf of Manager, including the insured's general supervision of Manager, products, and completed Services, and the premises owned, leased, occupied, or used.

23.4 <u>Specific Requirements for Professional Liability</u>. Manager shall purchase and maintain coverage with combined single limits for each wrongful act of ***<u>$5 million</u>*** per claim and ***<u>$100 million</u>*** aggregate per year to cover such claims as may be caused by any act, omission, negligence of Manager or its officers, agents, representatives, assigns, or subcontractors.

23.5 <u>Deductibles and Self-Insured Retentions</u>. Any deductible or self-insured retention must be declared to and approved by the Board.

23.6 <u>Certificate of Insurance/Endorsements</u>. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been provided to the Board by the Manager. The Manager must notify the Board promptly of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc.

24. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Manager shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of a workers' compensation insurance certificate, an independent contractor's exemption, or documentation of corporate officer status. Neither Manager nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

25. COMPLIANCE WITH LAWS

The Manager must, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the registration requirements and applicable provisions of the Securities and Exchange Act of 1934, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. The Manager must submit its full Form ADV Part 2 annually to the Board. The Manager is the employer for the purpose of providing healthcare benefits to its employees and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.I. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Manager with respect to the Services under the Contract subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, Manager agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this Contract.

26. DISABILITY ACCOMMODATIONS

The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in connection with the Services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

27. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at http://sos.mt.gov.

28. INTELLECTUAL PROPERTY/OWNERSHIP

28.1 Mutual Use. Manager shall make available to the State, upon reasonable request, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice, or created in whole or in part with respect to the Account under this Contract, if such availability is necessary for the State to receive the benefits of this Contract.

28.2 Title and Ownership Rights. The State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by the State (the "Work Product"), but grants Manager the right to access and use Work Product for the purpose of complying with its obligations under this Contract and any applicable statement of work.

28.3 Ownership of Work Product. Manager shall execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any Work Product.

28.4 Copy of Work Product. Manager shall, at no cost to the State, deliver to the State, upon the State's request during the term of this Contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of the State's request, or such expiration or termination.

29. CONTRACT TERMINATION

29.1 Termination for Convenience. The Board may, by written notice to Manager, terminate this Contract without cause and without incurring liability to Manager. The Board shall give notice of termination to Manager at least thirty (30) days before the effective date of termination. The Board shall pay Manager only that amount, or prorated portion thereof, owed to Manager up to the date the Board's termination takes effect. This is Manager's sole remedy. The Board shall not be liable to Manager for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

29.2 Termination for Cause with Notice to Cure Requirement. The Board may terminate this Contract in whole or in part for Manager's failure to materially perform any of the Services, duties, terms, or conditions contained in this Contract after giving Manager written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than thirty (30) days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

29.3 Reduction of Funding. The State must by law terminate this Contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA). If State or federal government funds are not appropriated or otherwise made available through the State budgeting process to support continued performance of this Contract (whether at an initial Contract payment level or any Contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this Contract as required by law. The State shall provide Manager the date the State's termination shall take effect. The State shall not be liable to Manager for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, the State shall be liable to Manager only for the payment, or prorated portion of that payment, owed Manager up to the date the State's termination takes effect. This is Manager's sole remedy. The State shall not be liable to Manager for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

30. EVENT OF BREACH – REMEDIES

30.1 Event of Breach by Manager. Any one or more of the following Manager acts or omissions constitute an event of material breach under this Contract:

- Services furnished substantially fail to conform to any Contract requirement;
- failure to submit any report required by this Contract, subject to Manager's right to promptly cure the breach pursuant to section 29.2;
- failure to perform any of the other material terms and conditions of this Contract, including but not limited to, beginning work under this Contract without prior State approval or materially breaching section ___ obligations, subject to Manager's right to promptly cure the breach pursuant to section 29.2; or
- voluntary or involuntary bankruptcy or receivership.

30.2 Actions in Event of Breach. Upon Manager's material breach, the Board may:

- terminate this Contract under section 29.2 and pursue any of its remedies under this Contract, at law, or in equity; or
- treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

31. FORCE MAJEURE

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

32. WAIVER OF BREACH

Either party's failure to enforce any Contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

33. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State Procurement Bureau's prior written consent. Product or Services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Manager's expense.

34. LIAISONS AND SERVICE OF NOTICES

34.1 Contract Liaisons. All project management and coordination on the State's behalf must be through a single point of contact designated as the State's liaison. Manager shall designate a liaison that will provide the single point of contact for management and coordination of Manager's work. All work performed under this Contract must be coordinated between the State's liaison and Manager's liaison.

________________State's liaison
Address:
Phone:
Fax:
Email:

Sasha Talcott
Brett Gorman
Pacific Investment Management Company LLC
650 Newport Center Drive
Newport Beach, CA 92660
Fax: 949-720-1376
Attention: General Counsel
E-mail: IMAnotices@pimco.com
E-mail: sasha.talcott@pimco.com
brett.gorman@pimco.com

34.2 Notifications. The State's liaison and Manager's liaison may be changed by written notice to the other party. Written notices, requests, or complaints pertaining to the Account, the Services or this Agreement must first be directed to the liaison. Notice may be provided by personal service, mail, facsimile, or electronic mail. If notice is provided by personal service, facsimile, or electronic mail, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

34.3 Identification/Substitution of PIMCO Account Personnel. The primary portfolio manager and account manager personnel responsible for management of the Account and the Services (the “Assigned PIMCO Personnel”) identified or described in Manager's proposal shall perform the Services provided for the Board under this Contract. Manager agrees that any Assigned PIMCO Personnel substituted during the term of this Contract must be able to conduct the required Service to industry standards and be equally or better qualified than the Assigned PIMCO Personnel originally assigned. The Board reserves the right to approve Manager Assigned PIMCO personnel assigned to work under this Contract and any changes or substitutions to such Assigned PIMCO Personnel. The Board's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Manager to perform and be responsible for its obligations under this Contract. The Board reserves the right to require Assigned PIMCO Personnel replacement upon reasonable request. If Assigned PIMCO Personnel become unavailable, Manager shall provide an equally qualified replacement in time to avoid delays in providing the Services.

35. MEETINGS

A representative of the Manager will meet, at least annually, with the Board’s representatives to explain the Services, and any reports related thereto, as may be mutually agreed by the Manager and the Board. The Board shall provide Manager a minimum of three full working days notice, of meeting date, time, and location. In-person meetings are desired; however, upon mutual agreement, conference calls may be substituted.

36. TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or if particular work on the Account is terminated for any reason, Manager shall provide transition assistance for a reasonable, mutually agreed period of time after receiving notice from the Board of the expiration or termination of this Contract or particular work under this Contract but prior to the termination date of the Contract or the termination date of a portion of the Services. The purpose of this assistance is to allow for the expired or terminated portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Services to the Board or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract prior to the Contract’s termination, except for those terms or conditions that do not reasonably apply to such transition assistance. The Board shall pay Manager for any resources utilized in performing such transition assistance through the termination date at the most current Contract rates. If the Board terminates this Contract for cause, then the Board may offset the cost of paying Manager for the additional resources Manager utilized in providing transition assistance with any damages the Board may have sustained as a result of Manager’s material breach in providing the Services hereunder.

37. CONFIDENTIAL INFORMATION

The Manager shall maintain the strictest confidence regarding the business affairs of the Board, the Pooled Trust and the Plans. All such information, including written reports furnished by the Manager to the Board shall be treated by the parties as confidential and for the exclusive use and benefit of the Board for the Pooled Trust and/or the Plans, except as disclosure may be required by regulatory or self-regulatory agencies having jurisdiction over the Manager or by applicable law.

The Manager may disclose information relating to the Board, the Pooled Trust, the Plans and/or the Account to its associates, to any of its delegates and other agents under the

Agreement, to any market counterparty or any broker (in accordance with market practice) in relation to transactions undertaken for the Account, and to the Custodian, in order to assist or enable the proper performance of its Services under the Agreement.

Subject to Account Investment Guidelines, the Manager and any trading counterparties are authorized to disclose transaction and other information to data repositories and regulators for the purposes of meeting applicable transaction and other regulatory reporting requirements.

The Manager may mention the Board's name in a list of its clients.

38. DELIVERY OF PARTS 1 AND 2 OF FORM ADV

The Board acknowledges that it has received a copy of Part 2 of the Manager's Form ADV, as amended, either prior to or at the time of execution of this Agreement.

39. CHOICE OF LAW AND VENUE

This Agreement is governed by the laws of the State of Montana. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in Montana First Judicial District Court, in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

40. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

41. AUTHORITY

This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, Chapter 5.

42. SEVERABILITY CLAUSE

A declaration by any court or any other binding legal source that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

43. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

This Contract consists of **(insert number)** numbered pages, any Attachments as required and Solicitation # 2016-0010V, as amended, and Manager's response, as amended, constitutes the entire agreement between the parties and supersedes in its entirety all prior agreements between the parties relating to the subject matter hereof. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

This Contract may be amended at any time but only by mutual agreement of the parties in writing.

44. WAIVER

The State's waiver of any Manager obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Manager obligation or responsibility.

45. REPRESENTATIONS

The parties agree that each party shall notify the other (i) of any changes regarding the information about itself in this Agreement, or (ii) if any of the representations or warranties herein are no longer true or completely accurate.

46. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH ACCOUNTS OF QUALIFIED ELIGIBLE PERSONS, THIS ACCOUNT DOCUMENT IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A TRADING PROGRAM OR UPON THE ADEQUACY OR ACCURACY OF COMMODITY TRADING ADVISOR DISCLOSURE. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS TRADING PROGRAM OR THIS ACCOUNT DOCUMENT

STATE OF MONTANA
PUBLIC EMPLOYEES' RETIREMENT BOARD
100 N Park, Suite 200
Helena, Montana 59620-0131

By: ______________________________ Date: ____________________
President
Public Employees' Retirement Board

Approved as to Legal Content:

By: ______________________________ Date: ____________________
Legal Counsel
Public Employees' Retirement Board

Approved as to Form:

By: ______________________________________ Date: ____________________

Procurement Officer
State Procurement Bureau

PACIFIC INVESTMENT MANAGEMENT COMPANY LLC
650 Newport Center Drive
Newport Beach, CA 92660
FEDERAL ID #: 33-0629048

By: ______________________________ Date: ______________________

Managing Director

EXHIBIT A

INVESTMENT GUIDELINES

STATE OF MONTANA PUBLIC EMPLOYEES POOLED TRUST

(PIMCO Account #1420)

Date

PIMCO will have full discretion to seek to cause the Stable Value Option of the Plans and/or the Pooled Trust that are subject to this Agreement to be invested in compliance with these Investment Guidelines. Unless otherwise noted herein, these Investment Guidelines apply at time of purchase. If at any time the Stable Value Option is not invested fully in compliance with these Investment Guidelines, PIMCO shall take such corrective actions as it deems advisable, in light of its fiduciary obligations to the Plan and/or the Pooled Trust.

Objectives

The primary objectives for the Stable Value Option are safety of principal and to provide liquidity for participant withdrawals and transfers to other investment options in the Plans and/or the Pooled Trust. Within these objectives, PIMCO will manage the Stable Value Option to also provide a reasonably stable rate of interest, track changes to interest rates over time, and maximize the return subject to prudent diversification and management.

The Board acknowledges that meeting or exceeding any of the objectives, targets or benchmarks discussed in these Investment Guidelines is a target only, and PIMCO shall not be liable to the Board or to any third party for its failure to meet or outperform any such goal.

Duration and Maturity

- The total market value weighted average duration of the Stable Value Option's investments will normally be between 1.5 and 5 years. Duration will be calculated using a reasonable market methodology.
- The maximum maturity of any GAC or BIC shall not exceed six (6) years from date of settlement of such contract.

Concentration Limits

- The maximum allocation to any one issuer of securities, including Associated Assets held by the Stable Value Option shall not exceed 5% of the total Stable Value Option. This limitation excludes U.S. treasuries, U.S. agency MBS, U.S. agency securities, or securities issued by or explicitly guaranteed by the U.S. government. Also excluded are Derivatives, STIFs, collective investment trusts, and investment companies registered under the Investment Company Act of 1940, as amended, or Cash Vehicles and Pooled Funds. This limitation also does not apply to non-securities such as Benefit Responsive Contracts. Specific mortgage pools and funds are considered separate issuers, and each tranche within a CMO is considered a separate issue.
- The maximum allocation to any one provider or issuer of a GAC or BIC shall not exceed 10% of the total Stable Value Option

Quality Ratings

- All Permitted Investments (other than Cash Vehicles, Derivatives, foreign currencies, Benefit Responsive Contracts, Money Market Instruments or Pooled Funds) will be rated a minimum of the equivalent of BBB- by at least one Nationally Recognized Statistical Ratings Organization ("NRSRO"), which will include Moody's Investor Services Inc. or a successor (if any), Fitch Ratings Ltd. or a successor (if any), and Standard & Poor's, a division of The McGraw-Hill Companies, Inc. or a successor (if any), or, if not rated by an NRSRO, will be of comparable quality as determined by PIMCO.
- All Benefit Responsive Contracts will be rated a minimum of the equivalent of A- by at least one NRSRO.
- All Money Market Instruments will be rated a minimum of the equivalent of A-1 by at least one NRSRO or, if not rated by an NRSRO, will be of comparable quality as determined by PIMCO.
- The maximum aggregate exposure to Associated Assets (other than investments in Cash Vehicles, Money Market Instruments, or other pooled investments) rated BBB- or, if not rated by an NRSRO, of comparable quality as determined by PIMCO, will not exceed 25% of the Stable Value Option.
- If the rating of any Permitted Investment falls below the minimum quality rating herein then PIMCO may determine to hold the Permitted Investment, sell, or terminate the Permitted Investment.
- PIMCO shall evaluate the creditworthiness of the Stable Value Option's counterparties to transactions including, but not limited to, permitted derivatives, repurchase agreements, and TBAs.
- The Stable Value Option's investment limitations apply at the time of acquisition of an investment. If a percentage limitation is adhered to at the time of investment, a later increase or decrease in percentage resulting from market fluctuations or other changes in the Stable Value Option's total assets will not result in a violation of the limitation and will not require PIMCO to dispose of such investment.

Permitted Investments

- Asset-backed Securities (ABS): ABS are securities collateralized by assets other than mortgages. The most common types of ABS are collateralized by credit card receivables, home equity loans, manufactured homes and automobile loans and are typically structured as pass throughs or as structures with multiple bond classes, like a CMO.
- Associated Assets: The financial obligation of some Benefit Responsive Contracts are supported first by one or more identifiable investments (the "Associated Assets"), which are typically bonds or portfolios of bonds, and then, to a lesser extent, the assets of the issuer of the Benefit Responsive Contract (the "Contract Provider"). There is usually no immediate recognition of investment gains and losses on Associated Assets in the Benefit Responsive Contract; instead, investment gains and losses are amortized over time into the Benefit Responsive Contract's performance by adjusting the contract's credited rate of interest. The terms, conditions, and investment guidelines of the Benefit Responsive Contract may limit the amounts and types of Associated Assets or may restrict or require certain actions by PIMCO, the trustee, Custodian, Plans, Pooled Trust, Board or its agents. The investment guidelines of Associated Assets will typically comply with the definition of Permitted Investments within these Investment Guidelines or will otherwise have stable value

investment objectives and investments that PIMCO believes are similar to or consistent with this Stable Value Option.

- Bank Investment Contracts (BICs): A BIC is a type of Benefit Responsive Contract that is a general obligation of a bank or other financial institution that promise to repay principal and to pay interest at a specified or determinable rate over a certain period of time. The performance of the BIC is typically backed by the bank or financial company's assets and is subject to the financial strength of the issuing company.
- Benefit Responsive Contract: Benefit Responsive Contracts are stable value investment contracts issued by insurance companies, banks, and other financial institutions and are intended to help provide steady income and reduce investment volatility in the Stable Value Option. Generally, Benefit Responsive Contracts are intended to allow for book value accounting and the ability for qualifying participant-directed withdrawals to occur from such contracts at book value (typically, deposited principal plus accrued interest less redemptions). Benefit Responsive Contracts include, but are not limited to, insurance company Separate Account Contracts (SACs), Synthetic Investment Contracts (SICs), Bank Investment Contracts (BICs), and insurance company General Account Contracts (GACs). The Stable Value Option may also invest in funding agreements and other contract agreements, or instruments intended to perform similarly to SICs, BICs or GACs. The terms and conditions of a Benefit Responsive Contract may restrict or require certain actions by PIMCO, the trustee, Custodian, Plans, Pooled Trust, Board or its agents and may limit the amounts and types of Associated Assets held by the Stable Value Option.
- Cash Equivalents: Investment grade securities with a duration less than or equal to 1 year.
- Cash Vehicles: Cash in the Stable Value Option not invested in other Permitted Investments may be accumulated and invested in short-term investment vehicles and bank STIF accounts, U.S. money market funds and other investment companies registered under the Investment Company Act of 1940, and other pooled funds, whether or not registered, or in collective investment trusts that satisfy the credit criteria and investment objectives of the Stable Value Option, whether offered by PIMCO, the custodian bank, or any other entity.
- Corporate Securities: Securities issued by domestic or foreign corporations.
- Credit Default Swaps: Credit Default Swaps are a mechanism to either purchase or sell default insurance. As a purchaser of a Credit Default Swap, the buyer pays a premium to enter into an arrangement that protects a portfolio holding in the event of a default. When selling a Credit Default Swap, the seller collects a premium for underwriting default insurance.
- Currencies: Includes currency Forwards and Futures.
- Derivative: A security which derives its value from movements in an underlying security, such as Credit Default Swaps, Forwards, Futures, Options, Caps and Floors, and Swaps. Derivatives may be centrally-cleared, exchange-traded, or over-the-counter ("OTC").
- Emerging Market Securities: Emerging market debt covers a broad variety of emerging market country securities including Brady bonds (typically denominated in U.S. dollars) and debt denominated in local currency.
- Futures and Forwards: Futures and Forward contracts are agreements to buy or sell a specific amount of a financial instrument for a specific price or yield on a stipulated future or forward date. The future or forward underlying instrument may be a security or index of an asset type permitted in the guidelines. If otherwise allowed, currency forwards and futures

may be used to hedge against foreign exchange risk, to increase exposure to a foreign currency, or to shift exposure to foreign currency fluctuation from one currency to another.

- General Account Contracts (GACs): A GAC is a type of Benefit Responsive Contract that is a general obligation of an insurance company that promises to repay principal and to pay interest at a specified or determinable rate over a certain period of time. The performance of the GAC is typically backed by the insurance company's general account's assets and is subject to the financial strength and claims paying ability of the issuing insurance company. A GAC may also be referred to as a GIC.
- Government-related Securities: Debt directly issued by a U.S. or foreign government-sponsored entity (GSE), a wholly-owned agency of the U.S. Government or a foreign government, a federally related institution where such debt is fully and explicitly backed by the full faith and credit of the federal government of the United States of America or foreign federal government, or related institutions (whether in the form of a full guaranty, an indirect guaranty, or an implied guaranty of such debt).
- Money Market Instruments: These assets include, but are not limited to, the following: Treasury bills, U.S. government and agency securities, commercial paper (including 4(2) CP programs), time deposits, bankers acceptances, certificates of deposits, repurchase agreements and reverse repurchase agreements that have a final maturity date not exceeding 397 days from the date of purchase. The above-mentioned security types may be either U.S. or Eurodollar issues.
- Mortgage TBAs: A contract for the purchase or sale of a MBS to be delivered at a future agreed-upon date.
- Mortgage-backed Securities (MBS): MBS are securities whose source of repayment is a mortgage or pool of mortgages, or whose repayments are collateralized by a mortgage or pool of mortgages. Mortgage-backed Securities include, but are not limited to, agency and non-agency pass-throughs and collateralized mortgage obligations (CMOs and REMICs).
- Municipal Bonds: Debt obligations of a state, territory, possession, or local government of the United States of America, the District of Columbia or any political subdivision of any of the foregoing.
- Non-U.S. Dollar Denominated Securities: Securities denominated in a currency other than U.S. dollars. If otherwise allowed herein, these securities must conform to the quality, concentration and other characteristics set forth by the guidelines.
- Pooled Funds: As a means of obtaining diversified fixed income exposure in an effective manner, upon approval from the client, the Stable Value Option may invest its assets in the shares of one or more other pooled funds, whether or not registered, or in collective investment trusts that PIMCO believes are similar to or consistent with the credit criteria and investment objectives of the Stable Value Option, whether offered by PIMCO, the custodian bank, or any other entity.
- Rule 144A Offerings: Securities issued or sold pursuant to Rule 144A under the Securities Act of 1933 provided that the Board meets the definition of a qualified institutional buyer (as defined in Rule 144A) at the time of purchase.
- Separate Account Contracts (SACs): A SAC is a type of Benefit Responsive Contract that is an obligation of an insurance company which is backed by one or more identifiable assets (Associated Assets) that are owned by the insurance company. The performance of the SAC is backed by the Associated Assets and, typically to a lesser extent, the insurance company that is the Contract Provider. SACs may be advised by the insurance company or

one of its affiliates or the insurance company may appoint an investment adviser to act as investment adviser to the SAC, which may be PIMCO.

- Sovereign and Supranational Debt: Debt issued and backed by Sovereigns or supranational agencies, including but not limited to the World Bank and the European Union.
- Swaps: Swaps are contracts that allow two counter-parties to exchange liabilities and include, but are not limited to, interest rate swaps, total return swaps, spread locks and swaptions. These instruments may be used so long as the underlying instrument is a security or index of an asset type permitted in the guidelines.
- Synthetic Investment Contracts (SICs): A SIC is a combination of a Wrap Agreement and one or more identifiable investments (Associated Assets). The performance of the SIC is backed by the Associated Assets and, typically to a lesser extent, the Wrap Agreement Contract Provider. Under a SIC, typically the Associated Assets are owned in the name of the Plan or Trust. The Associated Assets for a SIC will also be Permitted Investments.
- U.S. Treasury and Agency Notes and Bonds: Issues of the United States government and its agencies.
- Variable and Floating Rate Securities: Variable and floating rate securities provide for a periodic adjustment in the interest rate paid on the obligations.
- Wrap Agreements: A Wrap Agreement is a type of Benefit Responsive Contract issued by insurance companies, banks, and other financial institutions which, when associated with one or more identifiable investments (Associated Assets), creates what is known as a Synthetic Investment Contract. The Wrap Agreement allows for book value accounting and benefit-responsiveness for Associated Assets.
- Yankee/Euro Bonds: Yankee bonds are U.S. dollar-denominated securities issued by non-U.S. issuers or foreign subsidiaries of U.S. issuers and are predominantly traded in U.S. markets. Eurobonds are traded in the global marketplace. Issuers of Eurobonds may be domiciled in or outside of the U.S. Global bonds are a hybrid of Yankee and Eurodollar bonds. Like Yankee bonds, Global bonds are US dollar denominated and issued by non-US issuers or foreign subsidiaries of U.S. issuers, though they are issued and traded in both the U.S. (Yankee) and Euro markets simultaneously.

In the event that PIMCO wishes to make changes to or additions to, or deletions from, the Permitted Investments set forth in the Investment Guidelines, PIMCO shall submit to the Board a written list of such changes or securities/transaction types that PIMCO proposes to designate as Permitted Investments for the Board's review. If appropriate, the Board will then coordinate amendments to the Investment Guidelines in accordance with a timeline mutually agreed to by the parties.

Prohibited Investments

Except with the prior written approval of the Board, PIMCO will not invest assets of the Stable Value Option directly in:

- Securities whose issuer is in bankruptcy or similar proceeding at the time of purchase
- Commodities

- Equities (excluding shares of Pooled Funds, bank STIF accounts and US money market funds and equities distributed as part of a bankruptcy or reorganization)
- Non-U.S. Dollar denominated securities
- Emerging market debt securities in excess of 15% of the total assets
- Foreign currencies
- Direct real estate - direct ownership of real estate or real property
- Securities lending
- Auction rate securities
- Event-linked bonds
- High yield instruments

Benchmark

The Stable Value Option will be benchmarked against the Lipper Money Market Index and the 3-Year Constant Maturity Treasury (CMT).

Each fixed income investment strategy employed by PIMCO will employ an appropriate market value benchmark for measuring the strategy's return on a market value basis.

EXHIBIT B

BENEFIT RESPONSIVE CONTRACT SERVICES

STATE OF MONTANA PUBLIC EMPLOYEES POOLED TRUST

Date

Subject to written Investment Guidelines attached to the Agreement as Exhibit A, as such Exhibit may be amended from time to time, PIMCO is authorized on behalf of the Pooled Trust, the Plans and/or the Stable Value Option to provide the following Benefit Responsive Contract Services:

- Develop bid specifications and solicit new or revised bids for agreements or investments that provide benefit responsive characteristics, including but not limited to, General Account Contracts, Separate Account Contracts, Wrap Agreements as part of Synthetic Investment Contracts, or any other contract with benefit responsive characteristics (the “Benefit Responsive Contracts”) issued by both foreign and domestic insurance companies, banks, and other financial institutions (“Contract Providers”), as well as investment vehicles that invest in contracts with benefit responsive characteristics, such as pooled stable value vehicles.
- Enter into one or more agreements or investments, including but not limited to, Benefit Responsive Contracts or other investments that invest in benefit responsive contracts; and direct or otherwise cause the Plans' and/or the Pooled Trust's Board to enter into any and all documentation on behalf of the Plans and/or the Pooled Trust in order to provide the Services described herein.
- Review bid proposals submitted by Contract Providers and other investments that invest in benefit responsive contracts, negotiate commercially reasonable terms, and on behalf of the Pooled Trust, the Plans, and/or the Stable Value Option, enter into Benefit Responsive Contracts or other investments that invest in benefit responsive contracts or direct the Board to enter into such Benefit Responsive Contracts or other investments that invest in benefit responsive contracts on behalf of the Pooled Trust, the Plans, and/or the Stable Value Option.
- Exercise complete and ongoing discretion concerning the Benefit Responsive Contracts and other investments that invest in benefit responsive contracts, including monitoring creditworthiness, termination, reallocation, rebalancing, deposits, and withdrawals.
- Perform ongoing evaluation and adjustments to crediting rates and crediting rate formulas.
- Consolidate information to calculate each Benefit Responsive Contract’s crediting rate as necessary and provide such required information to the Custodian and/or Contract Providers, communicate reset crediting rates to the Custodian and/or any other party as directed by the Board, and assist the Custodian in any reconciliation of a Benefit Responsive Contract and portfolio valuation.
- Determine to what extent withdrawals should be requested from, or deposits to, Benefit Responsive Contracts based upon the Stable Value Option’s liquidity and hierarchy needs or as shall be required to restructure the Stable Value Option.

- Direct the Custodian to facilitate the transfer, liquidation, withdrawal, or deposit of funds between, out of, or into Benefit Responsive Contracts, other investments that invest in benefit responsive contracts, fixed income portfolios, liquidity buffer assets that are intended to provide daily liquidity for participants (such as money market funds or short term investment funds) not associated with Benefit Responsive Contracts (regardless whether such assets are managed by PIMCO), or individual securities held by the Stable Value Option consistent with its liquidity needs, hierarchy structure, and investment strategy.
- Communicate with Contract Providers on behalf of the Pooled Trust, the Plans, and/or the Stable Value Option as obligated under the terms of the Benefit Responsive Contracts regarding any changes in the Pooled Trust, the Plans, and/or the Stable Value Option, or administrative procedures which may have a material effect on the Pooled Trust, the Plans, and/or the Stable Value Option's Benefit Responsive Contracts.
- Respond to Contract Provider inquiries and convey information for maintaining compliance with the Benefit Responsive Contracts.
- Consult with the Board regarding appropriate target allocation to the liquidity buffer; monitor the target allocation to the liquidity buffer; monitor cash flows to and from the liquidity buffer; and reallocate to (or from) the liquidity buffer from (or to) the other assets of the Fund, as needed.
- Monitor the overall Stable Value Option's compliance with duration, credit quality, and asset allocations to managers based on Board established guidelines and targets.
- Provide quarterly to the Board a report on the assets of the Stable Value Option, including its total Benefit Responsive Contract value, market value, crediting rates, duration, and other relevant Benefit Responsive Contract information.
- Provide advice regarding the structure or restructuring of the Stable Value Option, requests for information or analysis on duration, fixed income investment strategies and allocations, liquidity buffer and Benefit Responsive Contract coverage, structure, and hierarchy, and benchmarks for the Stable Value Option.

SERVICES NOT INCLUDED

Except to the extent otherwise agreed by the Board and PIMCO in writing, PIMCO shall have no obligation to provide any services other than the Investment Management Services and/or the Benefit Responsive Services specifically described in the Agreement and/or in this Exhibit B. Without limiting the generality of the preceding sentence, the parties acknowledge and agree that the following are not included among the Services to be provided by PIMCO under the Agreement:

- Physical possession or custody of any Benefit Responsive Contract or any other investment that invests in benefit responsive contracts.
- Any responsibility concerning any other investment managers for the Pooled Trust, the Plans and/or the Stable Value Option, including the evaluation, selection, guideline negotiation, retention, monitoring, rebalancing, performance monitoring, or termination of investment managers for the Pooled Trust, the Plans and/or the Stable Value Option.

- Monitoring, making inquiry concerning, or conducting due diligence with respect to any other investment manager, the activities of any other investment manager, or the performance of any other investment manager in carrying out its duties with respect to the Pooled Trust, the Plans and/or the Stable Value Option.
- Any responsibility concerning the allocation of investments among PIMCO or unaffiliated products or investment managers.

EXHIBIT C

FEE SCHEDULE

STATE OF MONTANA PUBLIC EMPLOYEES POOLED TRUST

(PIMCO Account #1420)

Date

The schedule of annual fees for Investment Management Services and Benefit Responsive Contract Services (collectively, the "Services") performed by Manager with respect to the Stable Value Option of the Plans and/or Pooled Trust shall be as follows:

First $100 million	**0.225%**
Next $300 million	**0.175%**
Next $900 million	**0.15%**
Thereafter	**0.125%**

Fees are payable quarterly in arrears and are computed based on the value of the Stable Value Option as reported on the Custodian's statement for account #PP9N (the "Book Value Fund") at the end of the billing period to the PIMCO Stable Value Team.

The Pooled Trust is comprised of all funds and assets, including cash, cash accruals, additions, substitutions and alterations which are in the Pooled Trust.

Fees shall be paid in U.S. dollars.

Fees are based on the Investment Guidelines of the Account. Any material deviation from the Investment Guidelines described in Exhibit A (e.g. such as a change in investment discretion or investment strategy) to the Agreement may result in a change in fees upon mutual agreement of the parties in writing.

EXHIBIT D

DESIGNATED REPRESENTATIVES

STATE OF MONTANA PUBLIC EMPLOYEES POOLED TRUST

(PIMCO Account #1420)

Date

Name/Title	Signature